

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 15-00190-01-CR-W-BP
)	
DAVID R. PENTON,)	
)	
Defendant.)	

**ORDER AND OPINION (1) ADOPTING MAGISTRATE JUDGE’S REPORT AND
RECOMMENDATION AND (2) DENYING DEFENDANT’S MOTION TO SUPPRESS**

Defendant has been indicted on one count of knowingly possessing Oxycodone with the intent to distribute. (Doc. 10.) He filed a Motion to Suppress, (Doc. 33), contending the search of his backpack was unconstitutional. The Honorable Sarah W. Hays, Chief Magistrate Judge for this District, held a hearing on July 13, 2016, and she issued a Report on July 26, 2016 recommending that the Motion to Suppress be denied. (Doc. 46.) Defendant objects to Judge Hays’ Report and Recommendation (“the Report”). The Government has not responded to the Objection, and the time for doing so has passed. Local Rule 74.1(a)(2).

The Court has conducted a de novo review as required by 28 U.S.C. § 636(b)(1). In particular, the Court has reviewed the parties’ submissions before the hearing, the transcript from the hearing, the exhibits admitted during the hearing (including the video recording of the encounter at the bus station), and Defendant’s objections.

Having conducted this review, the Court adopts the Report in its entirety as the Order of the Court and denies the Motion to Suppress. Given the Report’s thoroughness there is no need for extended discussion. In summary, the Court finds that the initial encounter between Defendant and Detective Antonio Garcia was a consensual encounter and not an investigative

stop, so no level of suspicion was required for Detective Garcia to initiate questioning of Defendant. The Court further finds that Detective Garcia asked Defendant for permission to look through Defendant's backpack, and that Defendant granted permission before Detective Garcia searched the backpack's contents.

For these reasons, the Court **OVERRULES** Defendant's objections, (Doc. 49), **ADOPTS** Judge Hays' Report and Recommendation, (Doc. 46), and **DENIES** the Motion to Suppress. (Doc. 33.)

IT IS SO ORDERED.

DATE: August 29, 2016

/s/ Beth Phillips

BETH PHILLIPS, JUDGE

UNITED STATES DISTRICT COURT